

SCIARRA & CATRAMBONE, LLC

Charles J. Sciarra, Esq.

(Attorney Id. No.: 011371996)

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Attorney for Plaintiff

Michael O'Neill

Michael O'Neill,	: SUPERIOR COURT OF NEW JERSEY
	: LAW DIVISION - HUDSON COUNTY
	:
Petitioner	:
V.	: CIVIL ACTION
	:
JERSEY CITY	: DOCKET NO.: HUD-L_____
	:
	: COMPLAINT
	: IN LIEU OF PREROGATIVE WRIT
Defendant.	:
	:
	:

Plaintiff Michael O'Neill ("O'Neill") who brings this matter pursuant to N.J.S.A. 40A:14-155 as means of obtaining reimbursement of his legal expenses in defense of criminal charges which were dismissed and finally determined in the favor of the Plaintiff and N.J.S.A. 40A:14-147.2 seeking back pay and restoration of all contractual benefits accrued. The criminal charges emanated from his employer Jersey City and the Jersey City Police Department, located in the County of Hudson, State of New Jersey, wherein O'Neill alleges and says as follows:

JURISDICTION

1. Jurisdiction is properly laid in this Court in that Jersey City is subject to personal jurisdiction in the State of New Jersey, the events giving rise to the Complaint occurred within the County of Hudson.
2. Plaintiff brings this action under N.J.S.A. 40A:14-155 and N.J.S.A. 40A:14-149.2 for the reimbursement of the expenses of his defense of criminal charges which were dismissed and finally determined in the favor of the Plaintiff, for back pay and retroactive award of all contractual benefits, and for retroactive pension credits.

STATEMENT OF FACTS

3. O'Neill is employed as a Police Officer by the Defendant.
4. O'Neill was indicted by a grand jury June 14, 2016 and suspended from his employment without pay.
5. The indictment alleged that O'Neill was paid and failed to show up for work on a special New Jersey Department of Transportation Detail on June 3, 2014 and June 6, 2014.
6. After a trial, the Honorable Mirtha Ospina, J.S.C. granted O'Neill's motion for acquittal on October 12, 2018.
7. An written order was issued by Judge Ospina on October 17, 2018 entering the order.
8. On October 19, 2018, undersigned counsel for O'Neill, sent a demand to the Jersey City Clerk demanding reinstatement, full back pay and benefits, and for attorneys fees.
9. A Judgement of Acquittal was entered October 26, 2018.
10. Effective October 24, 2018, Police Chief Michael J. Kelly, ordered O'Neill be returned to pay and full police duty.

11. On October 31, 2018, counsel for Defendant, Scott Carbone, responded to the demand for reinstatement, full back pay and benefits, and for attorneys fees.
12. Defendant requested in the October 31, 2018 letter, documentation for any back pay mitigation which was provided by letter from the undersigned November 2, 2018.
13. Defendant also asked for more time to consider the counsel fee application, but to date they have not responded.

COUNT ONE
(N.J.S.A. 40A:14-155)

O'Neill SHOULD BE REIMBURSED FOR THE EXPENSE OF HIS DEFENSE OF THE CRIMINAL CHARGES FILED PURSUANT TO N.J.S.A. 40A:14-155.

14. O'Neill reasserts and realleges each and every previous paragraph as if fully set forth and reiterated herein.
15. N.J.S.A. 40A:14-155 provides for counsel fees. It provides, "Whenever a member or officer of a municipal police department or force is a defendant in any action or legal proceeding arising out of and directly related to the lawful exercise of police powers in the furtherance of his official duties, the governing body of the municipality shall provide said member or officer with necessary means for the defense of such action or proceeding, but not for his defense in a disciplinary proceeding instituted against him by the municipality or in criminal proceeding instituted as a result of a complaint on behalf of the municipality. If any such disciplinary or criminal proceeding instituted by or on complaint of the municipality shall be dismissed or finally determined in favor of the member or officer, he shall be reimbursed for the expense of his defense."

16. O'Neill was adjudged acquitted by the Superior Court on October 12, 2018.
17. The criminal complaint was instituted by Defendant through the Jersey City Police Department, Department of Internal Affairs.
18. Following the favorable determination of the criminal charges against Plaintiff, a demand for payment reimbursement of the defense costs, including but not limited to the reasonable legal fees, commensurate with the undersigned's expertise and years of practice, was made Defendant.
19. O'Neill seeks herein an Order from the Court for the reimbursement of his expenses for his defense of the criminal charges.

WHEREFORE, Michael O'Neill demands judgement against the Jersey City as follows:

- a. For an Order of the Court, pursuant to N.J.S.A. 40A:14-155 for the defense costs of O'Neill, including but not limited to the counsel fees and litigation costs to Sciarra & Catrambone, LLC.
- b. Payment of counsel fees and costs for the filing of the instant Complaint and papers in support thereof.
- c. For such other, further, additional and different relief as this Court deems just and proper.

COUNT TWO

(N.J.S.A. 40A:14-149.2)

O'Neill IS ENTITLED TO BACK PAY AND BENEFITS PURSUANT TO N.J.S.A.

40A:14-149.2.

20. O'Neill reasserts and realleges each and every previous paragraph as if fully set forth and reiterated herein.
21. N.J.S.A. 40A:14-149.2 provides, "If a suspended police officer is found not guilty at trial, the charges are dismissed or the prosecution is terminated, said officer shall be reinstated to his position and shall be entitled to recover all pay withheld during the period of suspension subject to any disciplinary proceedings or administrative action."
22. O'Neill was acquitted on October 12, 2018 of all criminal charges against him.
23. Defendant has already reinstated O'Neill to full duty with the Jersey City Police Department.
24. O'Neill has already produced to Defendant information pertaining to efforts to mitigate back pay during the time of the illegal suspension.
25. O'Neill is entitled to receive all contractual benefits including but not limited to retroactive reinstatement of health insurance, sick time accumulation, vacation time accrual, seniority, and pensionable service credits.

WHEREFORE, Michael O'Neill demands judgement against the Jersey City as follows:

- a. For an Order of the Court, pursuant to N.J.S.A. 40A:14-149.2 for the award of full mitigated back pay.

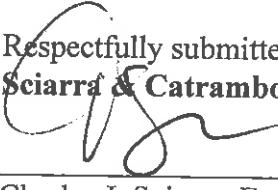
- b. Payment of counsel fees and costs for the filing of the instant Complaint and papers in support thereof.
- c. For an Order of the Court, pursuant to N.J.S.A. 40A:14-149.2 awarding retroactive contractual benefit to O'Neill and or payment for health care expenses incurred during the suspension.
- d. For such other, further, additional and different relief as this Court deems just and proper.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Charles J. Sciarra, Esq. is hereby designated as trial counsel.

Respectfully submitted,
Sciarra & Catrambone, LLC

By:


Charles J. Sciarra, Esq.

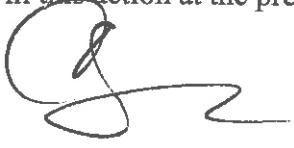
Dated: November 26, 2018

CERTIFICATION PURSUANT TO R. 4:5-1

The undersigned, of full age, hereby certifies as follows:

1. The matter in controversy is not the subject of any other pending court action or arbitration, other than those proceedings outlined herein.
2. No other court action or arbitration proceeding is contemplated at this time.
3. There are no other parties to be joined in this action at the present time.

By:


Charles J. Sciarra, Esq.

Dated: November 26, 2018